

(g) The agency's request for review shall fully describe why the agency disagrees with the denial or removal decision, and shall be accompanied by all documents and materials that the agency wants the Director to consider in reviewing the decision. The agency shall send a copy of the request for review, and the accompanying documents and materials, to the Director by overnight courier, for delivery the next business day, and must be received by the Director within 20 calendar days of the denial or removal notice.

(h) The Director may seek additional information from any party, in the manner and to the extent the Director deems appropriate.

(i) The Director shall issue a written decision no later than 45 calendar days from the receipt of the agency's request for review, unless the agency agrees to a longer period of time or the Director extends the period. That decision shall determine whether the denial or removal decision is supported by the record and the action is an appropriate exercise of discretion, and shall adopt, modify, or reject the denial or removal decision. The Director's decision shall constitute final government agency action.

(j) In reaching a determination, the Director may specify a person to act as a reviewing official. The reviewing official shall not be a person who was involved in the denial or removal decision. The reviewing official's duties shall be specified by the Director on a case by case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, or such other duties as the Director shall prescribe in a particular case.

(k) An agency that files a request for review shall bear its own costs and expenses, including counsel fees.

[71 FR 38078, July 5, 2006]

§§ 58.18–58.24 [Reserved]

§ 58.25 Qualifications for approval as providers of a personal financial management instructional course.

(a) *Definition of provider.* As used in this section the term “provider” means

a provider of a personal financial management instructional course.

(b) *Qualifications.* To be included on the list of approved providers under 11 U.S.C. 111, a provider shall meet the qualifications set forth in paragraphs (d) through (k) of this section. A provider shall continuously meet these qualifications in order to remain included on this list when the list is updated thereafter.

(c) *Preemption.* Nothing contained in these regulations or the related application, appendices or instructions is intended to preempt any applicable law or regulation governing the conduct or operations of a provider.

(d) *Structure and organization.* A provider of a personal financial management instructional course must be in compliance with all applicable laws and regulations of the United States and each state, commonwealth, district, or territory of the United States in which the provider conducts courses. Nothing contained in these instructions, the application, or the appendices thereto, is intended to preempt any applicable law or regulation governing the conduct or operations of the provider.

(e) *Standards for teachers.* A provider shall employ trained personnel with adequate experience and training in providing effective instruction and services, which means the provider shall employ, at a minimum, an individual who holds at least one of the following current certifications and/or accreditations, or who has equivalent training or experience, to supervise instructors:

(1) A state teacher's certificate in any subject;

(2) Certification as a Certified Financial Planner (CFP);

(3) Certification or accreditation as a credit counselor or a financial counselor by a recognized independent organization;

(4) Certification by the American Association of Family and Consumer Sciences;

(5) Registered as a Registered Financial Consultant (RFC); or

(6) Certified as a Certified Public Accountant (CPA).

(f) *Learning materials and methodologies.* A provider shall provide learning

Department of Justice

§ 58.25

materials and teaching methodologies designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such instructional course, which include written information and instruction on all of the following topics:

(1) Budget development, which consists of the following:

(i) Setting short-term and long-term financial goals, as well as developing skills to assist in achieving these goals;

(ii) Calculating gross monthly income and net monthly income;

(iii) Identifying and classifying monthly expenses as fixed, variable, or periodic;

(2) Money management, which consists of the following:

(i) Keeping adequate financial records;

(ii) Developing decision-making skills required to distinguish between wants and needs, and to comparison shop for goods and services;

(iii) Maintaining appropriate levels of insurance coverage, taking into account the types and costs of insurance;

(iv) Saving for emergencies, for periodic payments, and for financial goals;

(3) Wise use of credit, which consists of the following:

(i) The types, sources, and costs of credit and loans;

(ii) Identifying debt warning signs;

(iii) Appropriate use of credit and alternatives to credit use;

(iv) Checking a credit rating;

(4) Consumer information, which consists of the following:

(i) Public and non-profit resources for consumer assistance;

(ii) Applicable consumer protection laws and regulations, such as those governing correction of a credit record and protection against consumer fraud.

(g) *Course procedures.* A provider shall ensure the following procedures are followed:

(1) Generally, the provider shall:

(i) Require each debtor student to provide proof of identification, to provide his/her bankruptcy case number, and to sign in and sign out of the course;

(ii) Conduct the course for a minimum of two hours in length. Courses offered via the Internet or telephone should be designed for completion with a minimum of two hours;

(iii) At the end of the course, collect from each debtor student a completed course evaluation. The evaluation shall be in a form acceptable to the EOUST;

(2) For classroom instruction, the provider shall ensure:

(i) A teacher is present for purposes of instruction and interaction with debtor students;

(ii) Class size is reasonably limited to ensure an effective presentation of the course materials;

(3) For telephone instruction, the provider shall:

(i) Provide a toll-free telephone number;

(ii) Comply with the Americans with Disabilities Act and also include a toll-free number for deaf or hearing-impaired debtor students, e.g. TTY, TDD, or Text Telephone;

(iii) Employ adequate procedures to ensure that the debtor student is the individual who completed the course;

(iv) Ensure that a teacher is present telephonically for purposes of instruction and interaction with debtor students;

(v) Provide copies of the learning materials to debtor students before the telephone instruction session;

(4) For Internet instruction, the provider shall:

(i) Comply with the Americans with Disabilities Act and its application to the Internet;

(ii) Employ adequate procedures to ensure that the debtor student is the individual who completed the course and that the individual received two hours of instruction;

(iii) Ensure that a teacher will respond within one business day to a debtor student's questions or comments;

(5) In addition to meeting all other requirements, the provider who conducts telephone or Internet courses must demonstrate sufficient experience and proficiency in designing and providing services over the telephone or Internet.

(h) *Facilities.* A provider shall provide adequate facilities situated in a reasonably convenient location at which such instructional course is offered, except that such facilities may include the provisions of such instructional course by telephone or through the Internet, if such instructional course is effective;

(1) The provider shall ensure that any facility used by debtor students complies with all applicable laws and regulations including, but not limited to, the Americans with Disabilities Act Accessibility Guidelines, and all federal, state, and local fire, health, safety, and occupancy laws, codes, rules, or regulations.

(i) *Activity report and records.* A provider shall prepare and retain reasonable records (which shall include the debtor's bankruptcy case number) to permit evaluation of the effectiveness of such instructional course, including any evaluation of satisfaction of instructional course requirements for each debtor attending such instructional course, which shall be available for inspection and evaluation by the EOUST or the United States Trustee for the district in which such instructional course is offered;

(1) Upon application for annual approval, the provider must furnish an estimate of the information requested in Appendix F to the application, projected to the end of either the probationary period or annual period. Within 30 days after the completion of either the probationary period or annual period, the provider must furnish an amended Appendix F which includes the actual information;

(2) Make all records related to the provider's compliance with 11 U.S.C. 111 available to the United States Trustee or EOUST upon request and cooperate with the United States Trustee or EOUST for any scheduled or unscheduled on-site visit or customer service audit.

(j) *Fees and certificates.* If a fee is charged for counseling services, a provider shall charge a reasonable fee, and provide services without regard to ability to pay the fee; the provider's criteria for providing services without a fee or at a reduced rate must be pro-

vided to the United States Trustee. In addition, a provider shall:

(1) Have sufficient computer capabilities to issue certificates of completion of an instructional course in conformance with the directives established by the EOUST;

(2) Advise the debtor student of the fee schedule before the instructional course is provided and inform the debtor student that services are available for free or at a reduced rate based on the debtor student's ability to pay;

(3) Issue certificates to any debtor student who completes an instructional course without regard to the debtor student's ability to pay;

(4) Issue the certificate within three business days to a debtor student after completion of the required instructional course;

(5) Not withhold the issuance of a certificate because of a debtor student's failure to obtain a passing grade on a quiz, examination, or test. Although a test may be incorporated into the curriculum to evaluate the effectiveness of the course and to ensure that the course has been completed, the provider cannot deny a certificate to a debtor student if the debtor student has completed the course as designed;

(6) Not charge a separate fee for the issuance of a certificate unless the provider has clearly disclosed such fee before the beginning of the instructional course;

(7) Issue a certificate to each spouse in a joint case whether the course is completed independently or jointly;

(8) Maintain adequate records to issue replacement certificates and to verify the authenticity of certificates filed by bankruptcy debtors.

(k) *Provider declarations and acknowledgments.* (1) The provider's owner, president, chairman, trustee, or other authorized official is required to declare, by signing the application, that such individual is authorized to complete the application on behalf of the provider; that such individual has read and knows the contents of the application and all enclosures and attachments submitted; and to affirm under penalty of perjury that all of the representations and statements contained therein are true and correct to the best

Department of Justice

§ 58.26

of such individual's knowledge, information, and belief;

(2) The provider shall disclose the following information to each debtor student before the commencement of the instructional course:

(i) The provider's fee schedule, including any cost to the debtor student in addition to the course fee;

(ii) A statement that the course is offered to debtor students without regard to a debtor student's ability to pay;

(iii) The qualifications, including educational and training background, of the provider's teachers;

(iv) A schedule of course dates, times, and locations;

(v) A statement that the provider does not pay or receive fees or other consideration for the referral of debtor students to or by the provider;

(vi) A statement that, upon completion of the course, the provider will provide a certificate of course completion to the debtor student;

(3) By executing and submitting the "Application for Approval as a Provider of a Personal Financial Management Instructional Course," the provider acknowledges and agrees to abide by the prohibitions, limitations, and obligations set forth in Appendix A, "Acknowledgments, Agreements, and Declarations in Support of Application for Approval as a Provider of a Personal Financial Management Instructional Course," which include, but are not limited to, the following:

(i) Ensuring that no member of the board of directors or trustees, owner, officer, manager, employee, or agent is a United States Trustee Program employee, panel trustee, or person with a financial or familial connection to a panel trustee or an employee of the United States Trustee Program. For purposes of this paragraph, a person is not deemed to have a financial relationship to a panel trustee solely because the person is an employee of the panel trustee;

(ii) Not paying or receiving referral fees or other consideration for the referral of debtor students;

(iii) Ensuring that the course will not contain any commercial advertising, and that the provider shall not promote, market, or sell financial products; solicit business of any type; or

sell information about the debtor to any third party without the debtor's permission, whether the course is presented in a classroom, on the telephone, or on the Internet;

(iv) Complying with the EOUST's directions on approved advertising, which is located in Appendix A to the application;

(v) Cooperating with the EOUST and the United States Trustee in timely responding to any questions or inquiries concerning the provider's operations and/or instructional course;

(vi) Consenting that any forms, agreements, contracts, or other materials furnished to a debtor student will not limit the debtor student's ability to bring an action or claim under the provision of the United States Bankruptcy Code, 11 U.S.C. 101 et. seq.

(1) *Universities.* Accredited universities and community colleges ("universities") are eligible to apply to become providers using a streamlined version of the application. Universities need to complete only the following portions of the application:

(1) In section 1—General Information Concerning the Provider—complete sections: 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.8, and 1.10;

(2) In section 4—Learning Materials and Methodologies—complete sections: 4.1, 4.2, 4.4, 4.5, 4.6, 4.7, and 4.8;

(3) In section 6—Fees and Issuance of Certificates—complete section 6.1;

(4) In section 7—Activity Report for Approved Providers—complete section 7.1;

(5) In section 8—Acknowledgments, Agreements, and Declarations—complete sections 8.1 and 8.2;

(6) In section 9—Certification and Signature—execute the application as indicated in the instructions;

(7) Completed applications should be submitted to the EOUST in accordance with the procedures in section 58.19.

[71 FR 38082, July 5, 2006]

§ 58.26 Procedures for inclusion on the approved provider list.

(a) As used in this section the term "provider" means a provider of a personal financial management instructional course.

(b) Each provider seeking to be included on the list of approved providers